

REMARKS

Applicant has carefully studied the Office Action of October 27, 2003 and offers the following remarks.

§ 103

Claims 1, 4-9, 11-21 and 28-33 were rejected under 35 U.S.C. § 103 as being unpatentable over Finley et al. in view of Irons et al. and further in view of Golden et al. Applicant respectfully traverses. For the Patent Office to establish *prima facie* obviousness, the Patent Office must show where each and every element is located in the combination of references. MPEP § 2143.03. If the Patent Office cannot do this, then Applicant is entitled to a patent. When the Patent Office is selecting references to combine, the references must be analogous. The test for analogousness is set forth in MPEP § 2141.01(a) and states: "to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." The section goes on to state that "a reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the subject matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem." MPEP § 2141.01(a), internal citations omitted.

Irons et al.

In the present case, the Patent Office has selected two references which are non-analogous and combined them with Finley et al. Initially, Applicant objects to the use of Irons et al. in the rejection. As stated at col. 1, lines 11-15, Irons et al. is directed "to document management and more specifically relates to a system and method for indexing, imaging, storing and retrieving paper-based documents." This is clearly not in the field of Applicant's endeavor. Thus, Irons et al. fails the first part of the analogousness test. Irons et al. further does not, because of the subject matter with which it deals, logically commend itself to an inventor's attention when considering the problem of providing multiple browsers on kiosks. There is nothing in the reference that talks about kiosks or networking kiosks.

The Patent Office asserts that the reference is analogous to Finley et al. because they both "concern a computing environment with dispensers." Applicant initially notes that this statement does not conform to the correct standard. Specifically, the test for analogousness is not whether the references are analogous with one another, but rather whether the references are analogous to the claimed invention. Since the Patent Office applied the incorrect standard, the references have not been shown to be analogous. Even if the Patent Office's statement reflected the correct standard, Applicant respectfully traverses this assertion. While Irons et al. does use the word "dispenser" in the abstract and at other locations, Irons et al.'s dispenser is a label dispenser that is used by document management personnel to identify paper based documents with a unique document identifier. This identifier is then referenced so that electronic versions of the document may be identified. This dispenser is not a dispenser such as the fuel dispenser of the present invention, nor is this dispenser a kiosk as contemplated by the present invention. Thus, Irons et al. also fails the second prong of the analogousness test. Since Irons et al. fails both prongs of the analogousness test, Irons et al. is non-analogousness and is not available as a reference to be used in a rejection. Since Irons et al. is not available as a reference, the rejection based on Irons et al. is improper and the claims are allowable.

Even if Irons et al. is analogous (a point which Applicant does not concede), Applicant further traverses the combination of Finley et al. with Irons et al. The Patent Office asserts that it would have been obvious to use the multi-user WINDOWS NT environment of Irons et al. to provide a multi-user environment able to handle many users or only a limited number of users and devices attached to a network with a citation to Irons et al., col. 11, line 60 - col. 12, line 2. The cited passage does not indicate that there is a desire to have a multi-user environment; it merely mentions that the document management system could operate over an office intranet, in conjunction with any typical network operating system such as WINDOWS NT. A statement in the reference saying that there is an intranet does not correspond to a suggestion to provide a multi-user environment able to handle many users or only a limited number of users. To this extent, the Patent Office has not properly supported the motivation with the requisite objective evidence.

Even if the Patent Office has provided the requisite objective evidence to support the motivation, the motivation offered by the Patent Office does not compel the combination. Specifically, Finley et al.'s system fully addresses the need to support a multi-user environment

(albeit at the expense of many IP addresses and the use of WINDOWS CE). Specifically, Figure 1 of Finley et al. discloses 3 fuel dispensers 100, each with two fueling positions 110. Thus, as illustrated, Finley et al. supports from one to six users. Thus, there is no need to combine Finley et al. with Irons et al. to handle many users or only a limited number of users. Finley et al. does still require six IP addresses to handle the six users, but Finley et al. certainly contemplates a multi-user environment with multiple devices. Since the motivation offered does not compel the combination, and the references individually do not show all the claim elements, the combination is improper. Since the combination is improper, the Patent Office has not established *prima facie* obviousness and the claims are allowable.

Golden et al.

Applicant further traverses the combination of Finley et al. with Golden et al. Golden et al. is non-analogous art. The standard for analogousness is set forth above. Golden et al. is a system that combines packet-switched networks with circuit-switched networks such that a single computer can use both networks through a tool such as a single web browser (see Golden et al., col. 1, lines 19-26). To the extent that it is a single browser using two networks, it is not in the same field of endeavor as putting multiple browsers on a single kiosk. Further, because Golden et al. focuses on enabling a single browser to be used on multiple networks, Golden et al. does not logically commend itself to an inventor trying to put multiple browsers on a kiosk. Thus, Golden et al. fails both prongs of the analogousness test. The Patent Office asserts that Golden et al. is analogous by stating that Finley et al. discloses using a TCP/IP network for communicating between parts of the fuel dispensing system, including a display controller, and Golden et al. discusses controlling bandwidth in a multipoint/multimedia network. However, as stated above, the standard is not whether the references are analogous with one another, but whether they are analogous to the claimed invention. Nothing in the Patent Office's statement shows how Golden et al. satisfies either prong of the test for analogousness.

Even if Golden et al. is analogous (a point which Applicant does not concede), it does not show the claim element for which the Patent Office cites it. Specifically, the Patent Office indicates that Golden et al. discloses that the display controller has one IP address and each browser application is assigned a unique port address associated with the IP address with a citation to col. 48, lines 57-61, col. 49, lines 8-30, col. 50, lines 24-46, and col. 52, lines 20-34,

38-45. Applicant has studied these passages and notes that the subnet address described at col. 49, lines 8-30 is, in reality, assigned to a group of circuits (see col. 48, lines 53-63). Thus, the subnet addresses are applied to the groups of circuits used to make the call in the PSTN and not applied to individual browser applications as recited in the claims. To this extent, the reference does not show the claim element. Since Golden et al. does not show the claim element, and Finley et al. admittedly does not have the claim element, the combination of references cannot show the claim element. Since the combination of references does not show the claim element, the Patent Office has not established *prima facie* obviousness, and the claims are allowable.

Double Patenting


The Patent Office rejected the claims under the judicially created doctrine of nonstatutory double patenting. Applicant respectfully traverses. Applicant previously submitted a terminal disclaimer on July 30, 2003 to obviate this rejection. A copy of this terminal disclaimer is enclosed for the Patent Office's convenience. As the terminal disclaimer has been supplied and the terminal disclaimer fee has been paid, this rejection is not supported. Applicant requests withdrawal of the rejection at this time.

Conclusion

The references are not analogous and cannot be used to support a rejection. Even if the references are analogous, the references are not properly combinable with one another. Even if the references are properly combinable, the references do not teach the claim elements for which they are cited. Under any of these analyses, the Patent Office has not established *prima facie* obviousness and the claims are allowable. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

Respectfully submitted,
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